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Docket No. MCP-284



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : SZYMCZAK et al.
Serial No. : 09/966,441
Filed : 09/28/2001
Title : SIMETHICONE SOLID ORAL DOSAGE FORM

Art Unit : 1614
Examiner : Kwon, Brian Yong S.

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Timothy E. Tracy

(Name of applicant, assignee, or Registered Representative)


(Signature)

December 18, 2003

(Date of Signature)

Mail-Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

In accordance with the provisions of 37 CFR § 1.191, a timely Notice of Appeal was filed in the captioned application on August 29, 2003. A petition for a two-month Extension of Time is submitted concurrently herewith. Accordingly, this Appeal Brief is timely filed, with an executed Certificate of Mailing on or before January 2, 2004. Three copies of the Appeal Brief are enclosed.

same improved properties when formulated with simethicone. Thus, the rejection is not supported by fact and must be withdrawn for this reason alone.

Further, the Examiner has not provided any facts to support the proposition that using siMCC in Kitsusho's formulation would overcome the problem acknowledged by Kitsusho, e.g., not exceeding 25% simethicone in the formulation. It is not seen where there are any facts in the rejection to suggest any expectation of success for increasing the amount of simethicone in a formulation using an additional adsorbent, e.g., siMCC. Because it appears that the rejection is based upon possibilities or probabilities, it is improper and should be withdrawn.

Finally, Stevens does appear to close the gaps in the Examiner's rejection. The sole example in Stevens relied on by the Examiner provides factual evidence that the ratio of simethicone to adsorbent (dibasic calcium phosphate + microcrystalline cellulose + colloidal silicon dioxide) is 125:667, or 1:5.34. It is submitted that a ratio of 1:5.34 does not fall provide the requisite motivation to one of ordinary skill in the art to do what the Inventors of the captioned application have claimed. For this reason, the rejection is improper and should be withdrawn.

Accordingly, for the reasons set forth above, withdrawal of the rejections, and allowance of the claims is respectfully solicited

Respectfully submitted,

By: 

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Dated: December 18, 2003